

**AGREEMENT RELATING TO
WATER SUPPLY FOR
BULLFROG FLATS UGA
between
THE CITY OF CLE ELUM
and
TRENDWEST INVESTMENTS, INC.,
TRENDWEST RESORTS, INC., and
TRENDWEST PROPERTIES, INC.**

THIS AGREEMENT is entered into this 9th day of JUNE, 2001, between the City of Cle Elum, Washington (hereafter "City"), Trendwest Investments, Inc., a Washington corporation, Trendwest Resorts, Inc., an Oregon corporation registered to conduct business in the State of Washington, and Trendwest Properties, Inc., a Washington corporation (hereafter collectively "Trendwest").

RECITALS:

1. The City is a second-class city organized under the laws of the State of Washington, located in Kittitas County, Washington.
2. The City, in cooperation with the Town of South Cle Elum (hereafter "Town") and with the guidance and encouragement of the Washington State Department of Ecology (hereafter "Ecology") and the Washington State Department of Health (hereafter "Health"), is in the process of developing a regional public water supply system (hereafter "WSS") that is designed to provide water to users within the City and the Town as well as other users on lands located nearby.
3. Trendwest is the owner of approximately 1,120 acres located in the Bull Frog Flats area of Kittitas County, legally described in Exhibit A hereto, which lies wholly within an Urban Growth Area established by the City on June 23, 1998, pursuant to City Resolution No. 6/23/98-1. On December 22, 1998, the Kittitas County Board of Commissioners adopted Ordinance 98-24 amending the County Comprehensive Plan to establish the Bull Frog Flats Property (hereafter referred to as the "UGA Property") as within the City's Urban Growth Area. The UGA Property currently is being processed for annexation into the City, consistent with the desire and intent of both the City and Trendwest.
4. Trendwest conducts residential, commercial, and recreational development activities upon real property. As to the UGA Property, Trendwest is

proposing a community consisting of, among other elements: residential; business park; a park and playfields; community center; lands for public schools, water treatment plant, and cemetery expansion; a potential golf course and horse park; and open space. Exhibit B hereto sets forth on a map the UGA Property.

5. Trendwest needs water to accomplish its development and in 1997 approached the City with a request to obtain a water supply from the City, relying on the City's new WSS (now in its implementation stage), for use within the UGA Property.

6. In response to the water supply request of Trendwest, the City conducted a series of public meetings (before both a Committee of the City Council and the City Council) during 1998 and 1999, related to the establishment of a City policy pertaining to water use within the UGA Property, and on November 23, 1999, the City adopted Resolution No. 11/23/99-1. The foundation City policy set forth in the Resolution states that "no existing water rights or supplies presently owned by the City shall provide the base for supply water to the UGA." The Resolution further provides, among its elements, (1) that the City will not provide water to the UGA Property until a water supply agreement consistent with the policy and requirements of the Resolution is executed by the City and Trendwest, and (2) that the City will work with Trendwest in pursuit of the expeditious processing of any water right change applications designed to comply with the foundation City policy.

7. Trendwest has acquired water rights from the Yakima River known as the Pautzke Bait Co, Inc., water rights, recommended for confirmation under Claim No. 01724 by the Second Supplemental Report of Referee Re: Subbasin No. 7 (Reecer Creek), Washington v. Acquavella, Yakima County Superior Court No. 77-2-01484-5 (January 17, 2001). Trendwest has filed applications pursuant to the state water code for changes in point of diversion, place of use, and purpose of use of a portion of these water rights as a condition to the City serving approved uses in the UGA, provided that the City has agreed that water supplies for public school expansion, new public community center, cemetery expansion, and new business park uses within the UGA shall be based on water rights or supplies other than those provided by Trendwest.

8. Trendwest's desire is for the City to provide water sufficient to satisfy the water supply needs of the UGA Property, consistent with the City's foundation water policy, by obtaining appropriate changes (under the state water codes) to the water rights described in Recital 7, and transferring to the City as much water rights as is necessary to serve approved uses in the UGA, as also described in Recital 7.

the City agrees to modify the ERU requirement consistent with the first sentence of this subsection c.

- d. As to water supplied to the UGA Property for potential golf course use, the following water use methods and facilities shall be used:
 - (1) Computerized control of irrigation;
 - (2) Central weather station;
 - (3) Significant use of high-efficiency irrigation heads;
 - (4) Automatic shut down ability; and
 - (5) Shrubbery and plants as provided for in the City's "water-wise" water use program existing on the effective date of this Agreement or as hereafter adopted by the City.
- e. In times of shortage of water available to the City to supply all of the City's customers:
 - (1) Water shall be first reduced or terminated as to golf course uses (other than for greens, tees, and internal clubhouse uses) and horse park uses (other than for stockwatering) consistent with City-wide policies associated with recreational uses. If the water supply shortage requires further reduction in the supply of water after termination as above-described, any further reduction of the water supply shall be in accordance with the rules established by the City for recreational, open space and other uses of water within the City's service area.
 - (2) Notwithstanding the mandate of the first sentence of Paragraph 13.e(1), the City will supply water to satisfy uses reduced or terminated under said subsection in an amount equivalent to the amount of supplemental water (less conveyance and treatment losses) which is provided by Trendwest, on an interim basis solely during times of shortage, to a diversion work of Cle Elum's WSS located on either the Cle Elum or Yakima Rivers.

- (3) Nothing herein shall preclude Trendwest from providing water to satisfy uses reduced or terminated under the first sentence of subsection 13.e(1) through diversion and delivery facilities other than the City's facilities, on an interim basis solely during times of such shortage.

14. **Transfer of Water Rights.** Trendwest shall transfer to the City the water rights necessary to serve approved uses in the UGA, as described in Recital 7. Trendwest may transfer the water rights to the City in phases, and shall convey the rights, title and interest to these rights by one or more Statutory Warranty Deeds.

15. **Indemnification.** Trendwest hereby agrees to indemnify and hold harmless the City, its elected and appointed officials, employees, and agents, and their successors and assigns, from any and all claims arising under or related to implementation of this Agreement, (a) except to the extent the claims are resulting from any negligence or intentional act or omission of the City, or (b) except for claims arising from the adoption of water rates, water comprehensive plans, water conservation policies, or other actions of city-wide applicability. This indemnity shall survive cancellation of the Agreement.

16. **Notices.** All notices under this Agreement shall be in writing, and shall be delivered or mailed by certified mail, return receipt requested, and shall be effective as of the date of delivery, on the date of receipt as shown on the return receipt, or three days after the postmark date if there is no return receipt. Notices shall be addressed to the following addresses or to such other address as the Party may specify in writing:

TO CLE ELUM:
City of Cle Elum
119 W. 1st Street
Cle Elum, WA 98922

With a copy to:
Erin L. Anderson
Cone, Gilreath, Ellis, Cole &
Anderson
P. O. Box 499
Ellensburg, WA 98926

TO TRENDWEST:
Trendwest Properties, Inc.
P.O. Box 887
109 S. 1st Street
Roslyn, WA 98941

With a copy to:
Richard M. Peterson
Hillis, Clark, Martin & Peterson
1221 Second Avenue, Suite 500
Seattle, WA 98101-1090

17. **Reimbursement of Other City Costs.** Trendwest shall reimburse the City for all costs incurred by the City (a) in defending the validity or exercisability of

all water rights transferred to the City under this agreement pertaining to Acquavella, supra, or in any "non-general adjudication" of water rights litigation or with regard to any governmental action or process which may affect the legal status and/or the ability to make beneficial use of the water rights; (b) while participating in any federal, state, or local water planning process, including among others, habitat conservation planning relating to Federal Endangered Species Act species listings; or (c) in defending the validity of this Agreement, other than for procedural errors by the City made during the course of the approval by the City of this Agreement.

18. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns, and other successors in interest.

19. **Entire Agreement; Relationship to Other Agreements.** This document contains the entire agreement between the parties with respect to the subject matter of the Agreement. There are no agreements, promises, assurances, representations, warranties, undertakings, or understandings, either written or oral, between Trendwest and the City concerning the subject matter of the Agreement other than those set forth in this document. Any amendment of this Agreement must be in writing and signed by both the City and by Trendwest. The parties have previously executed other agreements concerning Trendwest's anticipated projects, some of which deal with the subject of water and including, but not limited to, the Agreement for Payment of Professional/Staff/Consultant Services, the Pre-Annexation Agreement, and the Water Supply System Project Development Agreement. This Agreement does not amend or supersede any other agreement between the parties. This Agreement is intended to be consistent with the terms of such other agreements, but to the extent of any conflict with those other agreements, the terms of this Agreement shall control as to issues relating to the supply of water to the UGA Property.

20. **Severability.** No provision of this Agreement is severable from other provisions of this Agreement. Should any provision or provisions of this Agreement be unenforceable for any reason, the party finding itself unable to enforce said provision(s) may, at its sole discretion, declare this entire Agreement to be null and void.

21. **Applicable Law; Venue.** This Agreement shall be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall lie in Kittitas County, Washington.

CITY OF CLE ELUM

Witnesseth:

By Gary Berndt
Gary Berndt
Mayor

DeLiela Bannister
DeLiela Bannister
Cle Elum City Clerk

Date: 6/15/01

Approved as to form:

Erin Anderson
Erin Anderson
City Attorney

TRENDWEST INVESTMENTS, INC.

By W.F. Peare
William F. Peare
President

Date: 6/19/01

TRENDWEST RESORTS, INC.

By W.F. Peare
William F. Peare
President

Date: 6/19/01

TRENDWEST PROPERTIES, INC.

By W. F. Pearce
William F. Pearce
President

Date: 6/19/01

Exhibits:

- A. Legal Description of Bullfrog Flats/UGA Property
- B. Map of Bullfrog Flats/UGA Property